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To:  
United States Environmental Protection Agency  
Christie Whitman, Administrator  
401 M Street, S. W.  
Washington, D.C. 20460

#### PETITION TO WITHDRAW HAWAII CERTIFICATION

Title VI OCR Complaint of Discriminatory Acts  
by a Federal Program Administrator and  
Petition asking for Withdrawal of the Authorization Granted to the State of Hawai'i  
to Act as a Federal Program Administrator

Enviro Watch, Inc., and the individuals, and families named herein (hereinafter referred to as Petitioners"), hereby petitions the Administrator of the United States Environmental Protection Agency (USEPA) to initiate formal proceedings to withdraw Hawai'i's authorization and approval to administer all agency programs in the State of Hawai'i.

This petition is being made pursuant to the Administrative Procedure Act [specifically, 5 U.S.C. §§ 553(e) and 555(e)] as well as RCRA and the FWPCA and the Civil Rights Act of 1964 Title VI, to request the Administrator to exercise her authority under 40 C.F.R. § 70.10 (c);

RCRA 42 U.S.C. § 6926(e) and 40 C.F.R. § 271.22; and FWPCA 33 U.S.C. § 1342 (c)(3) and 40 C.F.R. §§ 123.63 and 123.64 to remove the State of Hawaii as an authorized administrator of federal programs.

The withdrawal of state authority is necessitated by the failure of the State of Hawaii to properly administer and enforce the FWPCA and RCRA and the actual inability of the State to administer and enforce Underground Storage Tank program according to federal guidelines and rules. The state's economic condition coupled with the reduction in force (RIF) of state employees responsible for the inspection, recognition, and enforcement of violations has rendered Hawaii incapable of maintaining its state programs as mentioned above and has resulted in the failure to enforce environmental laws. Violations of program conditions, rules, contracts, and law have been ignored and are being ignored. The actions and inactions of the State, operating under the delegated authority of the Federal Government, have resulted in environmental injustice being imposed on a minority, low-income, public housing community and that the mandates of a Presidential Executive Order are being ignored. The Petitioners requests the opportunity, as part of the petition process, to further demonstrate the facts related to this petition and provide detail to the concise statement of facts contained herein and to include all procedural misconduct, violations of law, and any other related issue or issues uncovered and/or discovered by any investigation into these matters conducted by persons with the duty and authority and special knowledge of the law and procedures involved.

#### INTEREST OF PETITIONERS

Petitioners are a non-profit corporation, individuals, and families who seeks to enhance not only environmental quality of life but also the protection guaranteed by the laws enacted by democratic process of government that are necessary to the effective protection of our

environment. Petitioners have an interest in the enforcement of CERCLA, SARA, RCRA and FWPCA and a desire not to have children arrested as felons and prosecuted as a result of the acts and omissions of the State of Hawaii as the acts and omissions pertain to the administration and application of federal programs.

Petitioners live in the vicinity of sites and facilities that are and should be regulated by CERCLA, SARA, RCRA and FWPCA. The Petitioners have the expectation that industries and other regulated entities on the 539 square mile island of Oahu and within the State of Hawai'i, isolated in the middle of the Pacific Ocean, and economically or geographically unable to share resources, i.e., mercury testing meters, et al., will maintain compliance with the law, yet, the Petitioners have discovered the State of Hawai'i; 1) has no viable method of investigation and enforcement of Clean Water Act and CERCLA, SARA, RCRA and FWPCA violations, and; 2) has caused the physical arrest and detention of persons exposed to toxic mercury through the recklessness of the state, and; 3) has failed to comply with the requirements of the underground storage tank program contributing to the contamination of groundwater, coastal waters of the Island of Oahu, and properties under the jurisdiction of the United States Government, ie., Pearl Harbor and the Admiral's Landing, and; 4) has failed to locate, sanction, and correct the pollution of the waters surrounding the Hawaiian Islands, including the Rainbow Bay State Park, by petroleum products, toxic metals, and other products, and thereby commits environmental racism.

The Petitioners are forced, through the program administration authorizations, to rely on the State of Hawai'i to investigate the compliance status of certain facilities, including facilities owned by the State of Hawaii, so that noncompliance can be detected and remedied and the State of Hawai'i has exhibited that it is unable and/or unwilling to detect, investigate, remedy the situations, while, at the same time sponsoring violations of the states own law and federal

programs and federal laws designed to protect the people of the United States.

#### WHY FEDERAL ACTION IS NEEDED

Under 40 C.F.R. § 271.22, 40 C.F.R. § 70.10(c), and 40 C.F.R. § 123.63, the Administrator is to withdraw state authorization to implement programs under Subtitle C of RCRA and the FWPCA where those programs no longer meet the requirements imposed by federal law. State programs are to be withdrawn where the state enforcement programs fail to comply with the state program requirements set forth in the Code of Federal Regulations. The State of Hawaii is the owner of the toxic waste and is now responsible for investigating itself. The state has chosen to intimidate that affected person by use of the National Guard without a lawful callout and initiated the arrests of children for the purpose of suppressing the complaints of residents about mercury that has been spread throughout a public housing complex. The actions of the state have caused the refusal of members of the public, including area residents, to assist in locating sites contaminated by mercury and ensures that mercury contamination will remain undiscovered and pollute the environment for many years to come.

#### THE HAWAII PROGRAMS DO NOT MEET MINIMUM FEDERAL STANDARDS

The FWPCA, 33 U.S.C. § 1342(b) and other laws allow states to administer their own permit program, ie., for discharges into navigable waters within their jurisdiction in place of the direct federal program only as long as that state administers its program in accordance with the requirements set forth in FWPCA law and regulations. FWPCA 33 U.S.C. § 1342 and 40 C.F.R. § 123. The State of Hawaii through its Attorney General has received due and proper approval of its NPDES program through the State Department of Health effective on December 1, 1974.

EPA rules state this approval shall be withdrawn if the state program is no longer administered in accordance with the minimum requirements. See FWPCA 33 U.S.C. § 1342(c)(3) and 40 C.F.R. §§ 123.63 and 123.64. One of the key requirements a state must meet to maintain its state program is to have adequate investigatory and enforcement authority to carry out its program to the same extent that the Administrator could under the Federal programs (FWPCA 33 U.S.C. § 1342(b)(1) - (9) and 40 C.F.R. §§ 123.26 and 123.27). Given Hawai'i's current actions and recent response to a toxic mercury contamination of a public housing, Hawai'i does not exhibit the ability to administer the federal programs.

Further, any action to delegate authority and responsibility must consider ability to carryout the authority and responsibility that is delegated. Hawai'i does not exhibit the ability to inspect and enforce as mandated in the Federal programs administered.

Under 33 U.S.C. § 1342(b)(2)(B), in order to maintain its state program, Hawai'i must have adequate authority to "inspect, monitor, enter and require reports to at least the same extent as required in Section 1318 of this Title. Under 40 C.F.R. § 123.26, states must meet the requirements for a "compliance evaluation program" in order to keep their state programs under the FWPCA. States must "have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements" (See 40 C.F.R. § 123.26(b)). As part of this program, the state must have the ability to "verity the accuracy of information submitted by the permittee and other regulated persons in reporting forms, and other forms supplying monitoring data" (See 40 C.F.R. § 123.26(b)(2)(ii)). Without a viable investigative force, Hawaii failed to discover a UST it has owned since 1962, and proves that Hawai'i does not comply with the mandates. Hawai'i's ability to conduct investigative and enforcement actions is curtailed in the following areas:

1. Given the poor economic condition of the State of Hawai'i, (whose predicted future economic forecast is a downward economic trend and often termed a recession by experts in the field) personnel and budget cutbacks within state and city agencies, and responsibilities that are dispersed over islands separated by water, the State of Hawai'i demonstrates that it does not have the adequate investigative and enforcement authority invested in sufficient personnel necessary to carryout the federal mandates under CERCLA, SARA, RCRA and FWPCA.
2. The lack of enforcement not only compromises Hawai'i's ability to impose civil penalties for most violations, including those discovered through serendipity or informants, since there is no one to actually look for violations, but it also restricts and/or eliminates the State's ability to: 1) secure injunctive relief, and, 2) bring criminal actions (Because the State is unable to learn about violations due to inadequate investigative abilities, the State actually provides an immunity for those violations of law), 3) the State has refused, in the face of overwhelming physical evidence and statements of children, obtained by EnviroWatch, Inc., to acknowledge the source of the mercury as the "pumphouse" which it owns. The State has failed to interview the children with the intent of resolving the mercury pollution problem and has instead caused the arrest, as criminals, the children that can identify both the source of the mercury and the sites where the mercury was distributed and disposed of.

#### THE STATE OF HAWAII IGNORED FEDERAL MANDATES AND IMPOSED ENVIRONMENTAL INJUSTICE ON A MINORITY COMMUNITY.

On, Monday, March 12, 2001, an alert elementary school teacher discovered a child in possession of and playing with mercury. Her reporting of the child's exposure to mercury led to the discovery of the contamination of an entire state housing complex, playgrounds, and other

residences and sojourns of children to whom the mercury was distributed<sup>1</sup>. The emergency response to the report discovered the contamination of schools, public parks, homes, and the poisoning by contact and by ingestion of dozens of children, at least two of whom have dangerous levels of mercury in their systems. The state has estimated that over one and one-half gallons or more than thirty pounds of mercury were found by children in an abandoned and dilapidated building once owned by the US Navy and transferred to the State of Hawaii in 1962<sup>2</sup>.

The mercury was found by children playing at the abandoned pumphouse. The mercury leaked out of deteriorating gauges and pumping equipment. The building was unsecured even though officials, of both the Navy and several state agencies, knew of environmental contamination by PCB's and an Underground Storage Tank (UST) at the site before October, 1997<sup>3</sup>. There was no fence or barrier to prevent children from playing in and around the pumphouse. The property was not posted with "no trespassing" signs. Both sovereign governments also knew of and had access to Formerly Used Defense Site (FUDS) funds and Defense Environmental Restoration Program (DERP) funds administered by the US Corps of Engineers. Even though documents from the state Department of Land and Natural Resources claim the cost of the pumphouse cleanup was nearly equal to the value of the land, neither agency appears to have applied for the available cleanup funds or instituted cleanup in a timely manner<sup>4</sup>. Instead, the pumphouse was allowed to become a source of recreation. Interviews with parents of children found that the general public has been allowed access to the pumphouse site for between ten and twenty years. The doors and the roof have collapsed. A structure resembling a tree house is on the site. Even more egregious, is the fact that between October of 1983 and February 2000, the pumphouse area was set aside by a Governor's Executive Order as a part of the Rainbow Bay State Park<sup>5</sup>.

The State of Hawaii initiated, through an EPA certified contractor, an environmental cleanup. The state cordoned the area and prevented people from entering. The state testified at a public meeting before the Environmental Council on April 11, 2001, that people were not evacuated, yet the people were prevented from returning to their homes. The people were denied entry to their homes by the state Sheriffs and local police. Some were denied access to their medication for disabilities and serious illnesses, such as diabetes. To further the intimidation of the affected persons, the state National Guard was posted to excluded them from their homes without the declaration of a disaster or other emergency. Their personal property was seized and destroyed. The State has provided an arbitrarily and inadequate uranalysis and blood testing of exposure victims without followup care. Then, they began arresting the children.

The State's lack of environmental investigative and enforcement capabilities, as reported to the EPA in 1998<sup>6</sup>, is the root cause of the physical arrest and detention of the children. The pumphouse site contains an underground fuel storage tank (UST) and PCB's. The failure of the Department of Health to pursue the federal law requirement that all UST owners were to have reported the existence and completed the closure of their UST by December of 1998 led to the poisoning. Walter Ozawa, Director of the Office of Veteran's Services, wrote, in February of 1999, that the site includes "a parcel which contains two abandoned structures which housed pumping equipment and a small underground storage tank ("UST") which provided fuel for the pumps."<sup>7</sup> State agencies failed to report the UST. The site is also claimed to be contaminated by PCB. The state's lack of investigative capabilities at the Department of Health failed to discover the UST or the PCB. Compliance with federal law would have caused the removal of the UST and led to the removal of the mercury and PCB contamination of the site. Now, rather than coordinating responsible medical treatment for the children, the State of Hawaii has placed the



responsibility for the mercury contamination on the victims of the exposure. The state has caused the arrest and detention of children for playing in a state park!

In Hawaii, “[a] person commits the offense of burglary in the second degree if the person intentionally enters or remains unlawfully in a building with the intent to commit therein a crime against a person or against property rights. Burglary in the second degree is a class C felony (Hawaii Revised Statutes, Section 708-8 10). To prove the felony offense of burglary, the people accused must have intentionally and knowingly entered a building with the intent of taking the property of another. The old Navy pumphouse was an abandoned building, missing parts of its’ roof and its’ doors, hence, the property inside the abandoned building was also abandoned. The Navy didn’t want it in 1962 and gave it to the state. The Land Management Division of the Department of Land and Natural Resources didn’t want it in 1982 when they gave it to State Parks Division. The State Parks Division did not want it on February 25th 2000, when the Board of Land and Natural Resources transferred the site to the state Department of Defense. Now, according to the Honolulu Police Department, Public Information Officer, the state Department of Defense has reported the unlawful entry on March 10, 2001, of the pumphouse. The Department of Defense has essentially claimed ownership of the mercury and has reported it as valuable stolen property through the act of vandals and at least one child was arrested.

The State Parks Division had taken no precautions, from 1982, to exclude people from the site. In fact, the state failed to examine the site for an underground storage tank, in violation of federal mandates regarding the abandoned fuel storage tank.

It appears that because this mercury poisoning occurred in a public housing site, the prior owners of the site will be not be prosecuted. But, children have been arrested and detained. Place yourself in the position of a single-parent living in a public housing complex, whose child

has been poisoned by mercury: If you report or complain to the authorities, your child may be pulled out of school, in violation of state law, Chapter 19 school rules, arrested, and held in detention for hours and your personal property and household effects seized. You may even be expelled from the only housing you can afford for your children. It has already happened.

The State of Hawaii is congratulating itself for successfully cleaning up a toxic mercury event when in reality the state has created the environment where parents now believe that if their child tests positive for mercury, the child will be arrested by the police and their personal property seized. Parents now refuse to let their children identify other sites where mercury is still exposed to the public and posing a runoff problem, via storm drains, the “waters of the United States”. Further evidence that the people are accused of criminal acts is the placing of “Amnesty Barrels” for the drop off of mercury – “No questions asked” as if the possession of mercury by a public housing resident is a criminal act.

The arrest of the children was an intentional act of a state more interested in hiding its reckless behavior with intentional acts and denial of responsibility than in the health and well-being of public housing tenants. World history, since 1916, suggests that only Josef Stalin and Adolph Hitler had a more effective method of suppression.

Further the state has delayed, obfuscated, and/or otherwise refused the release of public documents in violation of the state’s own Uniform Information Practices Act, which is patterned on the federal government’s Freedom of Information Act. The denial of access to public records is further evidence of an intentional and orchestrated coverup and discriminatory acts of a federal program administrator.

EPA OFFICE OF CIVIL RIGHTS, TITLE VI, INTENTIONAL DISCRIMINATION

## COMPLAINT.

### COMPLAINT.

The mercury was housed in a community which consists of the poorest people with nearly the largest households sizes, and is nearly the least educated of the island communities (C&C Dept. of Planning, 1990 census). The community consists of Pacific Islanders, Blacks, Filipinos Asians, and the Kanaka Maoli (Native Hawaiian People), many of whom are physically disabled. Several of these peoples have much higher rates of asthma and heart disease than people of other communities. The collective actions of the State of Hawaii and the state Department of Defense constitute Environmental Injustice. Environmental Justice (EJ) is defined by Presidential Executive Order 12898

“as the “fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies.””  
(<http://www.epa.gov/swerosps/ej/aboutej.htm>, 12/17/98).

The fact that the Petitioners and the community have not been afforded the protection of environmental justice due to Hawai'i's inability or reluctance or refusal to abide by and enforce laws, including its own, while administering federal permit programs and expending federal funds is blatantly unfair.

This complaint is timely.

## CONCLUSION

Under 40 C.F.R. § 123.26, states must “have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or

noncompliance with applicable program requirements" (See 40 C.F.R. § 123.26(b)). As part of this program, the state must have the ability to "verify the accuracy of information submitted by the permittee and other regulated persons in reporting forms, and other forms supplying monitoring data" (See 40 C.F.R. § 123.26(b)(2)(ii)). Hawai'i, through inadequate staffing, inspection, and data collection procedures permits violations of the FWPCA mandate that States have access to relevant information not specifically required to be supplied by regulated entities so that it may "verify" compliance. The State of Hawai'i did not verify compliance with the regulatory programs it administers on behalf of the EPA.

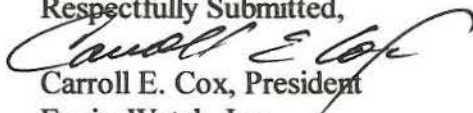
The FWPCA 33 USC 1342(b)(7) requires states to have adequate authority to "abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement. However, because of the states' inability or reluctance to investigate and enforce, Hawai'i is prevented, as a practical matter, from obtaining proof of such "willful" conduct, and from securing injunctive relief as required under 40 C.F.R. § 123.27(a)(2), and from "immediately and effectively" restraining any person from "engaging in any unauthorized activity which is endangering or causing damage to public health or the environment" as required by 40 C.F.R. § 123.27.

Thus, for the reasons set forth in this petition, pursuant to 5 U.S.C. §553(e), the Petitioners request that the Administrator of the USEPA begin proceedings to repeal or amend 40 C.F.R. part 272 and 40 C.F.R. part 70, Appendix A and withdraw Hawai'i's authorization to administer federal programs including any authorizations granted under CERCLA, SARA, RCRA and FWPCA.;

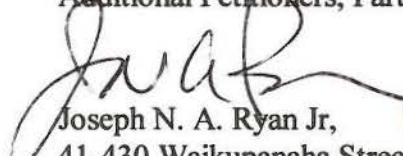
Additionally, the Petitioners ask that the Administrator conduct an investigation into the violation of the Civil Rights Act of 1964 under Title VI and provide any and all administrative actions that are just and reasonable.

Enviro Watch, Inc. reserves the right to amend this complainant and add petitioners as information becomes available.

Respectfully Submitted,

  
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*Vice President*  
*9/8/01*  
*Waived confidentiality.*

Documents cited:

<sup>1</sup>Department Of Health. Press Releases. March 12, 2001 through March 19, 2001.

<sup>2</sup>State Of Hawaii, Board of Land and Natural Resources, Agenda item D-2, Exhibit A, February 25, 2000.

<sup>3</sup>State of Hawaii. DLNR. Memorandum of Agreement on Proposed Exchange of Lands. "Approved by the Board of Land and Natural Resources at its meeting held on 10/10/97."

<sup>4</sup>Belt Collins to Mr. Dean Uchida, Administrator, DLNR February 29, 2000.

<sup>5</sup>State of Hawaii. Executive Order No. 3174. Setting Aside Land for Public Purposes. February 16, 1983.

<sup>6</sup>Waimanalo Citizens for a Healthy Future. Petition to withdraw. December 1998.

<sup>7</sup>State of Hawaii, Office of Veterans Services. Information Paper. Oahu Veterans Center Update. February 24, 1999.